

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RACHEL A. PRICE, an individual; and TESSA V. GEHARDT, an individual,

NO. 17-cv-01337 MJP

STIPULATED PROTECTIVE ORDER

Plaintiffs,

V.

EQUILON ENTERPRISES LLC, d/b/a SHELL
OIL PRODUCTS US, a Delaware Limited
Liability Company,

Defendant.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. **“CONFIDENTIAL” MATERIAL**

2 “Confidential” material may include the following documents and tangible things
3 produced or otherwise exchanged: all documents concerning corrective actions, letters of
4 commendation or reprimand, salary or pay information, performance evaluations, sick and
5 vacation leave hours, , personal financial records, medical records, and Defendants’ financial
6 information, customer and client information, and any other private, proprietary information in a
7 party’s possession that is not generally available to employees or the public. The parties agree
8 that a “Confidential” designation of documents that may fall into any of the above-described
9 categories does not waive a party’s right to challenge that designation. The parties also agree
10 that the definition of “Confidential” material contained in this paragraph does not limit a party’s
11 right to designate other documents or materials that are not specifically enumerated herein.

12 3. **SCOPE**

13 The protections conferred by this agreement cover not only confidential material (as
14 defined above), but also (1) any information copied or extracted from confidential material;
15 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
16 testimony, conversations, or presentations by parties or their counsel that might reveal
17 confidential material. To the extent that testimony is deemed confidential in any testimony, that
18 designation must be affirmatively asserted, consistent with paragraph 5.2(b) below.

19 However, the protections conferred by this agreement do not cover information that is in
20 the public domain or becomes part of the public domain through trial or otherwise.

21 4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

22 4.1 **Basic Principles.** A receiving party may use confidential material that is disclosed
23 or produced by another party or by a non-party in connection with this case only for prosecuting,
24 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
25 the categories of persons and under the conditions described in this agreement. Confidential
26 material must be stored and maintained by a receiving party at a location and in a secure manner
 that ensures that access is limited to the persons authorized under this agreement.

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the designating party, a receiving party may
3 disclose any confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well as employees
5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in house counsel) of the
7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
8 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
9 designated;

10 (c) experts and consultants to whom disclosure is reasonably necessary for
11 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
12 A);

13 (d) the court, court personnel, and court reporters and their staff;

14 (e) copy or imaging services retained by counsel to assist in the duplication of
15 confidential material, provided that counsel for the party retaining the copy or imaging service
16 instructs the service not to disclose any confidential material to third parties and to immediately
17 return all originals and copies of any confidential material;

18 (f) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
21 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
22 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
23 under this agreement;

24 (g) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information.

26 4.3 Filing Confidential Material. Before filing confidential material or discussing or
referencing such material in court filings, the filing party shall confer with the designating party

1 to determine whether the designating party will remove the confidential designation, whether the
2 document can be redacted, or whether a motion to seal or stipulation and proposed order is
3 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
4 standards that will be applied when a party seeks permission from the court to file material under
5 seal.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each party
8 or non-party that designates information or items for protection under this agreement must take
9 care to limit any such designation to specific material that qualifies under the appropriate
10 standards. The designating party must designate for protection only those parts of material,
11 documents, items, or oral or written communications that qualify, so that other portions of the
12 material, documents, items, or communications for which protection is not warranted are not
13 swept unjustifiably within the ambit of this agreement. By designating materials as Confidential,
14 the Designating Party and its counsel represent that they have a good faith belief that the
15 materials so designated contain sensitive, non-public, confidential information.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
17 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
18 unnecessarily encumber or delay the case development process or to impose unnecessary
19 expenses and burdens on other parties) expose the designating party to sanctions.

20 If it comes to a designating party's attention that information or items that it designated for
21 protection do not qualify for protection, the designating party must promptly notify all other
22 parties that it is withdrawing the mistaken designation.

23 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
24 agreement (see, *e.g.*, second paragraph of section 5.3 below), or as otherwise stipulated or
25 ordered, disclosure or discovery material that qualifies for protection under this agreement must
26 be clearly so designated when the material is disclosed or produced.

(a) Information in documentary form: (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the
2 original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to promptly resolve any
4 dispute regarding confidential designations without court involvement. Any motion regarding
5 confidential designations or for a protective order must include a certification, in the motion or in
6 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
7 conference with other affected parties in an effort to resolve the dispute without court action. The
8 certification must list the date, manner, and participants to the conference. A good faith effort to
9 confer requires a face-to-face meeting or a telephone conference. The parties agree to meet and
10 confer within five business days of a parties' challenge to a confidentiality designation.

11 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
12 intervention, the Designating party may file and serve a motion to retain confidentiality under
13 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). Failure to bring
14 a motion under Local Civil Rule 7 within five business days of the meet and confer regarding the
15 material constitutes a waiver of the confidential designation. This agreement shall not limit the
16 rights of the Requesting Party from bringing a motion to seal, in the alternative.

17 The burden of persuasion in any such motion shall be on the designating party. Frivolous
18 challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
19 expenses and burdens on other parties) may expose the challenging party to sanctions. All parties
20 shall continue to maintain the material in question as confidential until the court rules on the
21 challenge.

22 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
23 LITIGATION

24 If a party is served with a subpoena or a court order issued in other litigation that compels
25 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
26 party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party agrees to destroy all confidential material.

1 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
2 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
4 work product, even if such materials contain confidential material.

5 The confidentiality obligations imposed by this agreement shall remain in effect until a
6 designating party agrees otherwise in writing or a court orders otherwise.

7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

8 DATED this 18th day of January, 2018.

9 s/ Sheryl J. Willert
10 s/ Jeffery M. Wells
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16 Attorneys for Defendant

DATED this 18th day of January, 2018.

5 s/ Erin Pettigrew
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Attorneys for Plaintiffs

17 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

18 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
19 documents in this proceeding shall not, for the purposes of this proceeding or any other
20 proceeding in any other court, constitute a waiver by the producing party of any privilege
21 applicable to those documents, including the attorney-client privilege, attorney work-product
22 protection, or any other privilege or protection recognized by law.

23 DATED: January 19, 2018

24
25 
26 Marsha J. Pechman
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____ [date] in the case of *Rachel A. Price and Tessa V. Gehardt v. Equilon Enterprises LLC d/b/a Shell Oil Products US*, U.S.D.C. for the Western District of WA Case No. 17-cv-01337 MJP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature: